IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11100 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASH @ BACHCHI DAYARAM YADAV

Versus

STATE OF GUJARAT

Appearance:

MR AR SHAIKH for Petitioner No. 1

MR PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order passed by the Commissioner of Police, Surat City, Surat on 06.08.2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The petitioner is branded as a 'dangerous person'. The detaining authority considered five offences registered against the petitioner - detenu and

statements of two anonymous witnesses. The detaining authority found that the activities of the detenu are detrimental to public order and, therefore, he is required to be immediately prevented from pursuing his illegal activities. The authority also observed that resorting to less drastic remedies under ordinary law may not yield results and, therefore, came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

4. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the order dated 6.8.2001 on various grounds stated in the petition.

5. Mr.Shukla, learned advocate appearing for the petitioner has restricted his arguments to the fact of delay in passing the order resulting into improper exercise of powers under Section 3(1) of the PASA Act. The satisfaction recorded by the authority cannot be considered genuine for the need for passing of the order in exercise of this power.

6. Mr.Patel, learned A.G.P has opposed this petition.

7. On perusal of the papers and in light of the contentions raised before this Court, it appears that last offence was registered against the detenu on 23rd March, 2001. The statement of anonymous witnesses were recorded on 2nd and 3rd July, 2001 and were verified on 18th July, 2001. Thereafter, the order of detention was passed on 6th August, 2001 i.e. after about 18 days.

8. It is clear from the above undisputed factual data that there was a gap of about five months from the date of last registered offence to the date of passing of order and gap of about 18 days between the date of verification of the statements of anonymous witnesses and passing of the order. The satisfaction recorded by the detaining authority regarding need for passing of the order in exercise of powers under Section 3(1) of the PASA Act cannot be considered as genuine in law. If the authority was genuinely satisfied for the need, the action would have been taken much earlier, at least immediately after verification of the statements on 18.07.2000. That having not been done, it can not be accepted that satisfaction for the need for passing of the order under Section 3(1) of the PASA Act was genuine. The order of detention would therefore stand vitiated.

The petition, therefore, deserves to be allowed.

9. In the result, the petition is allowed. The impugned order of detention dated 06.08.2001 passed by the Commissioner of Police, Surat City, Surat against the petitioner - detenu is hereby quashed and set aside. The detenu-Prakash @ Bachchi Dayaram Yadav be released from detention forthwith, if not required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(A.L. Dave, J)
'Bhavesh'